

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Union Pacific Railroad Company  
for an Order Declaring and Adjudicating the  
Legal Status of the Cal Poly Crossing at Milepost  
246.9 in the City of San Luis Obispo and County  
of San Luis Obispo, State of California, the  
Necessity for Keeping the Crossing Open, and the  
Need for Safety Improvements and  
Apportionment of Costs.

Application 02-08-006

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON MOTION FOR JOINDER**

On March 25, 2003, a duly noticed Law and Motion hearing was held at the Commission Courtrooms in San Francisco, California. The subject of the hearings was a motion of the Commission's Railroad Crossing Engineering Section (Staff) to join First Worthing Company Limited and Stenner Glenn Student Living as parties to this proceeding. These entities own and/or operate student living complexes near the crossing that is the concern of this proceeding. For easy identification, the familiar names of "Mustang Village" and "Stenner Glenn" will be used to identify these apartment complexes.

Present at the hearing room were counsel for Staff, Union Pacific Railroad Company (UP) and Mustang Village. Participating by telephone were counsel for City of San Luis Obispo (City) and California Polytechnic State University (Cal Poly). Stenner Glenn made no appearance, though Staff asserted that it was served a copy of the motion, and did not file an opposition to Staff's motion.

Staff moved that Mustang Village and Stenner Glenn be made parties pursuant to Code of Civil Procedure Sections 379(a) and 379(a)(2). It was joined in this position by UP, who emphasized the use that the resident students of Mustang Village and Stenner Glenn make of the crossing.

Neither City nor Cal Poly stated a position on the motion. Their participation was entirely passive.

Mustang Village made a special appearance claiming that there is no personal or subject-matter jurisdiction over it. It alleges improper service of the Motion. It does not claim that it was ignorant of the motion and the instant hearing was postponed at the request of counsel for Mustang Village. We further note that an attorney for Mustang Village took part in a prior prehearing conference without making a special appearance. There is personal jurisdiction over Mustang Village.

Mustang Village also asserts that Pub. Util. Code § 1202.3 only permits allocation of costs for crossing protection to railroads and governmental entities, and thus we have no subject-matter jurisdiction over Mustang Village. Mustang Village argued that CCP 379 does not create jurisdiction where none previously existed. If the record should so warrant, the Commission may well make findings that Mustang Village and Stenner Glenn should be responsible for a portion of the costs of any improvements and protection ordered in this proceeding. How these could be recovered need not be addressed at this time. With regard to the Commission's authority to compel joinder, I call attention to Pub. Util. Code § 1703 which prohibits entertainment of motions for misjoinder of parties. There is subject-matter jurisdiction over Mustang Village.

I note that a mediation proceeding is scheduled for April 23, 2003. Mustang Village has offered to participate in the mediation, even though not a

party. Since Stenner Glenn was not at this hearing there is no indication of its position on mediation participation.

**IT IS RULED** that:

1. The motion of Staff to join Mustang Village and Stenner Glenn as parties is granted.
2. Prepared testimony of all parties is to be mailed by April 18, 2003. This mailing date is equally applicable to Mustang Village and Stenner Glenn.
3. Discovery has been completed. However, since Mustang Village and Stenner Glenn were not parties prior to this order, there has been no opportunity for them to conduct or respond to discovery. Requests by and of Mustang Village and Stenner Glenn may be made no later than April 3, 2003 and responses completed by April 11, 2003.

Dated March 26, 2003, at San Francisco, California.

/s/ SHELDON ROSENTHAL

Sheldon Rosenthal  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Motion for Joinder on all parties of record in this proceeding or their attorneys of record.

Dated March 26, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.